IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

A.S.No.746 of 1992

The Superintending Engineer,
Coimbatore Electricity Distribution
Circle/South,
Coimbatore - 12. ... Appellant/ Defendant

vs.

Ramaswamy ... Respondent/ Plaintiff

Appeal filed under Section 96 of the Code of Civil Procedure against the judgment and decree dated 05.08.1989 made in O.S.No.399 of 1986 on the file of the First Additional Sub-Court, Coimbatore.

For Appellant : Mr.N.Muthusami

For Respondent : Mr.P.Selvaraj

J U D G M E N T

Challenging the judgment and decree dated 05.08.1989 made in O.S.No.399 of 1986 on the file of the First Additional Sub-Court, Coimbatore, the defendant has preferred this appeal.

2. Brief facts leading to the filing of the appeal, in a nutshell, are as under:

(i) The plaintiff is a Cobbler belonging to Scheduled Caste. On 01.06.1982, his second son minor Rajan alias Ramaswamy, aged about 7 years and his first deaf and dumb son were playing near their house at Konavaikalpalayam, Kurichi Village, Coimbatore. While the two sons of the plaintiff were playing, a sudden electric shock bursted out from the nearby Electric post and it caused an immediate attack on them. The deaf and dumb son escaped from the heavy shock though affected by it. But unfortunately, the plaintiff's minor second son Rajan was heavily attacked and died of electrocution.

(ii) According to the plaintiff, the accident occurred due to negligence and carelessness of the

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handling of the job of maintaining the Electricity circuit in that locality by the defendant employees and they are vicariously liable for the accident; because of lack of vigilance and smartness of the defendant Board, the plaintiff has lost his second son; it is the bounden duty of the defendant and his men to maintain the electricity circuit key and prevent all reasonable dangers to the inhabitants of the locality.

(iii) Since the first son is deaf and dumb, the plaintiff thought of putting his deceased son in education and he was prepared to spend any amount for the same. According to the plaintiff, his deceased son had a very good opportunity of education and job on availing the concessions given to the Schedule Caste community by the Indian Government. According to the plaintiff, the pain and suffering which he experiences due to the death of his second son is immeasurable and nothing would console him equal to his deceased son. Therefore, he filed a suit in O.S.No.399 of 1986 on the file of the Subordinate Court, Coimbatore for a direction to the defendant to pay a sum of Rs.50,000/- with future interest and costs.

(iv) In the Written Statement, the defendant has stated that under Hindu Law, the mother alone is the legal representative of the unmarried deceased sons; the father has no legal claim to succeed to the estate of the son, while the mother is alive; therefore, the suit as framed is not maintainable in law and facts. It is further stated that the plaintiff is not a dependant of the deceased boy; moreover he has not stated the real facts and circumstances under which the boy was electrocuted. At the time of the alleged accident there was heavy gale and live wire had loosened and touched and energised the iron pole; since the Board is always taking proper care in maintaining the lines, the touching of the pole by the live wire is beyond the control of the Board due to natural calamities and causes. Due to heavy wind and rain, even well-built structures could not withstand; that being so, the Department cannot be saddled the burden and liability for the accident which was not due to their act; since the deceased boy was aged only 7 years, he was unable to resist the induction but the same was not due to electric shock.

(v) The defendant has specifically denied in the Written Statement that the deceased boy was very good

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and intelligent. According to the defendant, the deceased boy was not studying in School and he was only grazing the cattle as stated by his father in his statement to the Department. The defendant also denied the allegation and claim of the plaintiff regarding the quantum of compensation. The defendant contended that the claim of Rs.50,000/- is excess, arbitrary and has no legal basis, since the plaintiff has nowhere stated that he was getting income through his deceased son; therefore, the claim is not only excessive but also an imaginary one.

(vi) It is the further contention of the defendant that their Board is not liable to pay compensation for no fault of their employees. But in any event, the Department is generous enough to grant an ex gratia payment of Rs.7,200/- to the parents of the deceased as per the rules and regulations of the Board. But the legal heirs of the deceased have so far not claimed the same. Therefore, they prayed for dismissal of the suit.

4. The Trial Court, on consideration of the oral and documentary evidence has decreed the suit with costs, holding that the plaintiff is entitled to compensation of Rs.27,000/- with interest at the rate of 12% per annum from the date of filing of the suit till the date of payment and also directed the defendant to pay a sum of Rs.3,750.50 to the Government as court fee. Challenging the said order passed by the First Addl. Sub Judge, Coimbatore, the defendant Board has preferred this appeal.

5. Heard Mr.N.Muthuswamy, learned counsel for the appellant/defendant and Mr.P.Selvaraj, learned counsel for the respondent/plaintiff.

6. Learned counsel for the appellant/defendant has strenously put forth the following contentions :

(i) having held that the mother alone is the legal heir of the deceased, the court below should have rejected in limine the suit filed by the father.

(ii) the interpretation of the learned Sub Judge as regards Section 4 of the Fatal Accidents Act is highly misconceived and ex facie erroneous and there is nothing to warrant an inference that either father or mother alone can file a suit for compensation.

(iii) the learned Sub Judge erred in drawing inspiration from and placing any reliance on the

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provisions of the Motor Vehicles Act and the practice and procedure adopted in cases pertaining to Motor Accident claims.

(iv) the finding of the court below that the fatal accident was solely due to the negligence on the part of the defendant is not based on any evidence, either oral or documentary but purely on surmises and conjectures and moreover the learned Sub Judge has failed to see that even PW1 has not asserted in a categorical manner that the accident was due to negligence on the part of the defendant.

(v) the finding of the learned Sub Judge that the poles got energised resulting in electrocution and consequential death of the deceased and that the defendant Board has not maintained the lines and poles properly is not based on any evidence whatsoever.

(vi) the court below has failed to consider the force and fury of nature in the form of a strong gale resulting in the accident and that it was beyond the power and control of the defendant.

(vii) the fixation of quantum of compensation is not on any rationable basis but arbitrary.

7. Per contra, learned counsel for the respondent/plaintiff has contended that the plaintiff, who is the father of the deceased minor boy aged about 7 years has the legal right to claim compensation, since he is dependant on him. He submitted that the plaintiff has two sons, one is deaf and dumb and the other is the deceased minor boy; the deceased son is the only source of the plaintiff's future; if were alive, he would have been given better education using the benefits due to the Schedule Caste community and he would have come up in life. According to the learned counsel, the Trial Court has rightly taken into consideration the various factors and calculated the compensation; the findings rendered by the Trial Court in respect of the negligence caused due to the maintenance of the electricity circuit in that locality based on the oral and documentary evidence are indisputable and the compensation awarded is in accordance with law. He contended that there is no legal infirmity in the findings of the Trial Court and therefore, the appeal deserves no consideration and the same is liable to be dismissed.

8. I have given careful consideration to the submissions made by the learned counsel on either side.

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9. It is not in dispute that on 01.06.1982, the plaintiff's younger son aged about 7 years died due to electrocution and that if he were alive, he would have been given proper education and would be of great support to the plaintiff in future. It is seen from the Written Statement that at the time of the alleged accident, there was heavy gale and live wire had loosened, touched and energised the iron pole; the touching of the pole by the live wire is beyond the control of the Board due to natural calamities and causes. It is also stated that even well built structures could not withstand due to heavy wind and that the Department cannot be liable for the accident. The defendant Board has admitted that since the boy was only 7 years, he was unable to resist the induction but the same was not due to electric shock. Though the plaintiff has deposed that his deceased son, aged about 7 years was earning a sum of Rs.5/- daily by way of grazing the cattle, he has not produced any evidence before this Court to that effect. It is also seen in the Written Statement that the Department is willing to grant Rs.7,200/- as ex gratia to the parents of the deceased as per the Regulations of the Board.

10. The Trial Court has considered the oral evidence of P.W.1, the father of the deceased minor boy, who has narrated the circumstances under which the accident took place due to the carelessness and negligence of the appellant/defendant Board. The Trial Court has also considered the evidence of D.W.1, who has deposed that the accident is beyond the control of the defendant Electricity Board since at the time of accident, there was heavy gale and live wire had loosened, touched and energised the iron pole. The documentary evidence in Ex.A1 dated 23.05.1982, which is the letter addressed to Kurichi Village Officer by the Sub-Inspector of Pothanur and the letter of the Assistant Electrical Engineer to the plaintiff in Ex.A2 regarding the payment of ex gratia have been considered by the Trial Court. The Trial Court has also considered the documentary evidence on the side of the defendant Board marked in Ex.B1 - letter of the plaintiff to the Assistant Electrical Engineer and Ex.B2- Report of the Assistant Electrical Engineer regarding the accident.

11. The Trial Court, on consideration of the oral and documentary evidence, the age of the deceased boy and taking into account the future prospects of the deceased boy, calculated the monthly income of the deceased at Rs.150/- for a period of 15 years and held that the plaintiff is entitled to Rs.27,000/- as compensation with 12% interest per annum, which according to this Court is reasonable.

12. This Court, in several cases similar to the case on hand has awarded compensation on the basis of certain factors which are necessary to arrive at such a quantum of compensation. It is seen

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that the Trial Judge has taken into consideration the provisions under Section 4 of the Fatal Accidents Act and the provisions under the Motor Vehicles Act. On consideration of the facts and circumstances of the case, it is seen that the plaintiff has lost his younger son, who would be of great moral support to the family, if he were alive. According to the defendant Board, the deceased minor boy died only because he was unable to resist the induction from the electric pole and that the Board cannot be burdened with the liability of the accident; but, the fact remains that the deceased died of electrocution due to the improper maintenance of the poles by the defendant Board. Though, loss of life of the child cannot be compensated by any means, monetary compensation would certainly be helpful to the parents of the deceased. In that view of the matter, the findings arrived at by the Trial Judge to give an equitable remedy of awarding Rs.27,000/- as compensation to the plaintiff who has lost his only support to the family cannot be termed as erroneous, as he has rightly taken into consideration the necessary factors for determining the compensation.

13. In view of the foregoing discussion, this Court finds that there is no infirmity in the findings of the Trial Court and accordingly the same is confirmed.

In the result, the appeal stands dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The First Additional Subordinate Judge,
Coimbatore.

2. The Record Keeper,
VR Section, High Court, Madras.

1 cc to Mr.N. Muthuswami, Advocate, Sr. 73234

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